

REMARKS

The Examiner has again rejected Claims 20-50 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctively claim the subject matter which applicant regards as the invention. In particular, the Examiner again takes issue with applicant's claimed "reconstructing the session." In applicant's previous response, applicant argued that such terminology is sufficiently clear, in view of both the teachings of the specification and the plain meaning of "reconstructing." Evidence of the plain and ordinary meaning of the term "reconstructing" is found in the following dictionary definition.

reconstruct

1. To construct again; rebuild.
2. To assemble or build again mentally; re-create: reconstructed the sequence of events from the evidence.
3. To cause to adopt a new attitude or outlook: a diehard traditionalist who could not be reconstructed.

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The Examiner has taken issue with the fact that applicant has relied on both the teachings of the specification and the plain meaning of "reconstructing." Further, the Examiner has stated that "reconstructing the session" "will be treated as the gathering of information about the session, and the analyzing of this gathered information in order to monitor or account a specific flow (session), or sets of flows (sessions), of network information."

Since such definition does not reflect the plain and ordinary meaning of the term 'reconstruct' (as constrained by the specification and evidenced by the above exemplary definition), applicant respectfully disagrees with this interpretation. It appears that the Examiner is requesting an explicit specific definition of the phrase "reconstructing the session." To overcome the Examiner's concerns, such a definition is set forth as follows:

“reconstructing the session” is to be interpreted as an operation that “constructs again, rebuilds, and/or recreates (per the above definition) a session that comprises a plurality of flows which, in turn, comprise a plurality of packets, wherein the reconstruction is performed utilizing at least one application associated with the session.”

In view of the above definition, applicant thus argues that the present claim language is sufficiently clear and definite.

The Examiner goes on to take issue with applicant’s claimed “reconstructing the session utilizing the identified application at a plurality of collaborating nodes.” Specifically, the Examiner starts by arguing that it is unclear how a single “identified application” is operated “at a plurality of collaborating nodes.” In response, it appears the Examiner is misinterpreting such claim language. Applicant is not claiming “operating an identified application at a plurality of collaborating nodes,” but rather reconstructing a session at a plurality of nodes. Applicant has amended the claims to make this clearer. The Examiner should note that the packets (that make up the flows that make up the session that is associated with an application) can traverse multiple (and possibly different) nodes during a communication session. Note Figure 6 of applicant’s original specification. Thus, applicant’s claim language is sufficiently clear and makes sense, contrary to the Examiner’s related statements.

The Examiner completes his 112 arguments by stating that that the claimed “hints” are unclear, and then interprets the “hints” to encompass any information about a packet. Again, applicant argues that such terminology is sufficiently clear, in view of both the teachings of the specification and the plain meaning of “hints.” Evidence of the plain and ordinary meaning of the term “hint” is found in the following dictionary definition.

hint
1. A slight indication or intimation: wanted to avoid any hint of scandal.
2. A brief or indirect suggestion; a tip: stock-trading hints.

3. A statement conveying information in an indirect fashion; a
clue: Give me a hint about the big news.
4. A barely perceptible amount: just a hint of color.

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Moreover, in response to the concerns of the Examiner, the applicant has amended the claims to more specifically define the hints, in the claims. Thus, this rejection is deemed to be adequately avoided.

Claims 20-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiu et al. (U.S. Patent Number 5,101,402), hereinafter referred to as Chiu, in view of Ronen (U.S. Patent Number 5,845,267), hereinafter referred to as Ronen, further in view of Maccabee et al. (U.S. Patent Number 6,108,700), hereinafter referred to as Maccabee. Still yet, Claims 20-50 are further rejected under 35 U.S.C. 103(a) as being unpatentable over McCreery et al. (U.S. Patent Number 5,787,253), hereinafter referred to as McCreery, in view of Ronen (U.S. Patent Number 5,845,267), hereinafter referred to as Ronen.

Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove. Since such amendments are similar to the dependent claims previously submitted, applicant purports that such amendment would not require further search and/or consideration.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the

prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991). Applicant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met.

With respect to the first element of the *prima facie* case of obviousness, the Examiner states that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Chiu and McCreery in view of the teachings of Ronen. Applicant respectfully disagrees with this proposition, especially in view of the vast evidence to the contrary.

For example, the Examiner fails to cite specific motivation in the above references to support the case for combining the same. The Examiner is reminded that the Federal Circuit requires that there must be some logical reason apparent from the evidence of record that would justify the combination or modification of references. *In re Regel*, 188 USPQ 132 (CCPA 1975).

Further, Chiu and McCreery relates to systems for monitoring and analyzing network activity, while Ronen relates to a billing system. To simply glean features from a billing system, such as that of Ronen, and combine the same with the *non-analogous art* of systems for monitoring and analyzing network activities, such as those of Chiu and McCreery would simply be improper. Billing systems bill for activity, while systems for monitoring and analyzing network activity monitor network performance. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992). In view of the vastly different types of problems a billing system addresses as opposed to systems for monitoring and analyzing network activity, the Examiner's proposed combination is inappropriate.

With respect to the third element of the *prima facie* case of obviousness, the Examiner has amended his previous action to cite the following additional excerpts from Chiu and McCreery to meet applicant's claimed "reconstructing the session utilizing the identified application at a plurality of collaborating nodes" (emphasis added – see all of the independent claims).

A second preferred embodiment of the present invention is embodied in a plurality of copies of a software program, each copy executing on a node in a separate portion of an Ethernet WAN, such as the network of FIG. 4. Each node executing the software program is operated in promiscuous mode.

Because each copy of the software program executes on a node in a separate portion of the network, each node will "see" a different set of packets. For example, referring to FIG. 4, a copy of the software program of the present invention executing on node D will never see packets sent from node A to node C because node C is on the other side of the router from node D. Neither will node D see packets multicast from node A, since multicast packets are not forwarded across routers. In contrast, a copy of the software program of the present invention executing on node B will see both packets sent from node A to node C (since node B is on the same side of the bridge as is node C) and packets multicast from node A.

Each of the plurality of software programs of the second preferred embodiment collects session information from the packets that it "sees" in a manner similar to the manner employed by the software program of the first preferred embodiment described in FIGS. 5-15. In addition, however, the software programs send the collected information to a central node upon receiving an information request from the central node.

The central node correlates the collected information received from the various nodes. For example, in FIG. 4, since both node C and node D "see" packets sent from node B to node E, both node C and node D will collect session information from those packets. The collector node contains a software program to eliminate this duplication of collected information from the global collected data, such as the total.sub.--sessions.sub.--attempted field. The collector node also recognizes duplications of single session information. For example, in the example above where information concerning packets sent from node B to node E is collected by both nodes C and D, only one set of collected information will ultimately be retained by the collector node." (see col. 11, line 55 - col. 12, line 28 from Chiu)

"Additionally, a plurality of internet activity analyzers 300 may be connected to network segments to access more comprehensive information. Although the internet activity analyzer 300 is primarily intended for analyzing internet activity, including that on the Internet, it is understood that the analyzer 300 may be used

to monitor any network, including a local area network (LAN) if desired." (see col. 6, lines 41-43 of McCreery)

With respect to Chiu, such reference merely suggests different software programs on different nodes that send information to a central component. Moreover, McCreery merely suggests multiple analyzers. Neither reference even suggests "reconstructing the session utilizing the identified application, the session reconstruction being carried out at a plurality of collaborating nodes," (see all of the independent claims, as clarified).

Only applicant teaches and claims multiple nodes that both perform the claimed reconstruction AND collaborate with respect to such reconstruction, as claimed. For example, Chiu's nodes just gather and do not reconstruct and certainly do not collaborate with each other in such regard. Moreover, McCreery's analyzers do not reconstruct, as specifically claimed, and do not collaborate, as claimed.

It appears that the Examiner has not taken into consideration the full weight of applicant's claims, as highlighted by the discussion above regarding the interpretation issues. Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance or a specific prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Nevertheless, in the spirit of expediting the prosecution of the present application and bringing this manner to a conclusion, applicant has amended each of the independent claims to include the following subject matter:

"wherein the session reconstruction is performed at a first analyzer, and upon a successful session reconstruction on the first analyzer, a first message is sent to at least one second analyzer separate from the first analyzer, the first message corresponding to session data, and

upon an unsuccessful session reconstruction on the first analyzer, one or more messages is sent to the second analyzer, the one or more messages including unrecognized data.”

Thus, the specific details regarding the collaboration amongst the nodes during session reconstruction is now explicitly set forth. Again, a notice of allowance or a specific prior art showing of all of applicant’s claim limitations, in combination with the remaining claim elements, is respectfully requested.

The Examiner continues by rejecting Claims 20-50 under 35 U.S.C. 103(a) as being unpatentable over “Rich Data About Customer Usage” (Narus’ semantic traffic analysis), written by Bill Roberts for Internet World, v5, n10, p27, published 3/15/1999, in view of “Narus and Portal Join to Provide Internet service Providers Full Customer Management and Billing Solutions; Alliance creates Solution Suites for ISPs to Build Service-Driven Businesses”, Business Wire, 3/16/99. Applicant’s invention was completed in the United States at a date prior to March 15, 1999, the effective date of the above reference that was cited by the Examiner. A declaration and evidence of such was previously submitted herewith.

In his latest action, the Examiner argues that the submitted evidence is not enabling and fails to show sufficient details regarding conception and reduction to practice. The only specific allegation the Examiner makes is that “[t]he operation of the invention at a plurality of collaborating nodes and the coordination of multiple agents within the system is never discussed.” Applicant respectfully disagrees with this assertion. On page 1 of Exhibit A, “distributed” operation is clearly set forth.

It appears that the Examiner has rejected applicant’s previous submission based solely on the content of the exhibit. The Examiner is reminded that the exhibit must be considered in combination with the affidavit. Applicant purports, that by doing so, the previously submission is adequate for overcoming the Narus reference.

Even if the Examiner's assertion were to be correct, the Narus reference inadequately meets the prime face case, since the prior art reference fails to teach or suggest all of the claim limitations. Specifically, the following claim limitations are not met:

"reconstructing the session utilizing the identified application, the session reconstruction being carried out at a plurality of collaborating nodes"

"wherein the session reconstruction is performed at a first analyzer, and upon a successful session reconstruction on the first analyzer, a first message is sent to at least one second analyzer separate from the first analyzer, the first message corresponding to session data, and

upon an unsuccessful session reconstruction on the first analyzer, one or more messages is sent to the second analyzer, the one or more messages including unrecognized data."

With respect to the previously added dependent claims, applicant has carefully reviewed the excerpts relied upon by the Examiner to reject the same, and has found serious deficiencies in the Examiner's application of the prior art. Highlighted below are claimed features that are clearly not even suggested by the Examiner's proposed combination(s):

"a first flow associated with a first application flows through a first one of the nodes." (see Claim 41)

"a second flow associated with the first application flows through a second one of the nodes." (see Claim 42)

"each of the collaborating nodes includes a packet source and a first hierarchical network analyzer" (see Claim 43)

“each of the collaborating nodes further includes a filter coupled between the packet source and the first hierarchical network analyzer.” (see Claim 44)

“the first hierarchical network analyzers of each of the nodes feed information to a second hierarchical network analyzer.” (see Claim 45)

“the information is used by the second hierarchical network analyzer to reconstruct the session utilizing the identified application.” (see Claim 46)

“the information involves packet forwarding.” (see Claim 47)

“the information involves hints and packet forwarding, the hints being generated by a lower level session analyzer and provided to a higher level analyzer to facilitate the reconstruction of the session.” (see Claim 48, as amended)

“the information involves hints and a summary of packets, the hints being generated by a lower level session analyzer and provided to a higher level analyzer to facilitate the reconstruction of the session.” (see Claim 49, as amended).

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance or a specific prior art showing of all of applicant’s claim limitations, in combination with the remaining claim elements, is respectfully requested.

An allowance is respectfully requested.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is hereby authorized to charge any fees that may be due or credit any overpayment to Deposit Account No. 50-1351 (Order No. XACTP015B).

Respectfully submitted,

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